

## STATE OF NORTH DAKOTA

## BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF: )  
)  
)  
North Dakota State Board of Medical )  
Examiners - Investigative Panel B )  
)  
Complainant, )  
)  
)  
vs. )  
)  
)  
John H. Ellyson, M.D., )  
)  
)  
Respondent. )

**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

On August 14, 2001, a Complaint was filed with the North Dakota State Board of Medical Examiners (“Board”) by its Investigative Panel B, through Special Assistant Attorney General John M. Olson (“Olson”), requesting revocation of, or other appropriate administrative action to be taken against, the license authorizing the practice of medicine in the state of North Dakota of the Respondent, John H. Ellyson, M.D. (“Ellyson”). The complaint cites as grounds for taking administrative action against Ellyson's license violation of N.D.C.C. § 43-17-31(1).

On November 19, 2001, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing on the Complaint and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On November 21, 2001, the undersigned ALJ was designated to preside.

On November 28, 2001, the ALJ issued a Notice of Hearing scheduling a hearing on the Complaint for January 8, 2002, beginning at 9:00 a.m., in the Office of Administrative Hearings,

Bismarck, North Dakota. The hearing was held as scheduled. Olson represented the Board (Investigative Panel B) at the hearing. Olson called one witness, the Board's Executive Secretary, Rolf P. Sletten. Ellyson was present at the hearing. Ellyson represented himself at the hearing and participated by testifying and by cross-examining Mr. Sletten. Fourteen (14) exhibits were offered and admitted as evidence. Olson offered Exhibits 1-5 and 14; Ellyson offered exhibits 6-13. An exhibit list is attached to this decision.

At the close of the hearing the ALJ heard oral argument from Olson and Ellyson.

Based on the evidence presented at the hearing and the oral argument of Olson and Ellyson, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Ellyson is currently licensed to practice medicine in the state of North Dakota pursuant to a license issued by the Board on March 2, 2001. Exhibit 3. Ellyson applied for the North Dakota license on October 24, 1999. The Board received his application on November 1, 1999. Exhibit 1. On November 17, 2000, the Board's application interview committee interviewed Ellyson.

2. Ellyson is also currently licensed to practice medicine in the states of California, Iowa, Washington, and West Virginia (inactive). He is also licensed to practice medicine in New South Wales, Australia (inactive). Exhibits 1 and 6.

3. Ellyson was denied a license to practice medicine in Colorado on February 9, 2000. Exhibits 4 and 8. The reason cited by the Colorado Board of Medical Examiners for its denial was "upon review of the malpractice cases reported to the Board in your application, that

your care and treatment in at least two (2) cases fell below the generally accepted standards of medical practice and constituted unprofessional conduct.” February 14, 2000, letter, Exhibit 4.

4. Ellyson has applied for a license to practice medicine in Oregon by application submitted to the Oregon Board on October 10, 2000.

5. The Board learned of the Colorado denial of Ellyson's license from an Oregon investigator who telephoned Mr. Sletten. Sletten then obtained information from Colorado about the Colorado Board's denial. *See* Exhibit 4.

6. Ellyson applied for a license to practice medicine in Colorado on July 8, 1999. Exhibit 4. On November 4, 1999, after Ellyson submitted his North Dakota application, Colorado sent Ellyson a letter stating that it was investigating his treatment of six patients, asking for further information, and inquiring about whether Ellyson wished to continue with the application process. Exhibit 10. Ellyson supplied further information and the Colorado Board issued its denial letter on February 14, 2000. Exhibit 4.

7. In submitting his North Dakota application form Ellyson, on page 3, under the section entitled “8. MEDICAL LICENSURE” lists his California, West Virginia, New South Wales, Iowa, and Washington licenses. He does not list Colorado, *i.e.*, the Colorado application. Exhibit 1.

8. The Instruction Sheet for the North Dakota application form, on page two, states regarding application form “Section 8 Medical Licensure - List all medical licenses you have ever applied for in the U.S. or Canada, whether or not the license was granted. Include every type of medical licensure whether or not the license is current at this time. You must forward the enclosed “Verification of Licensure” form to the appropriate licensing board of each state/province.” Exhibit 2. (Emphasis in the original.) On the first page of the Instruction Sheet

in regard to the Verification of Licensure form at Number 11 it states, “[t]he enclosed ‘Verification of Licensure’ form must be completed by the licensing board of each state/province where you hold, or have ever held, any type of medial license (regardless of whether the license is active or inactive, temporary or permanent, restricted or non-restricted, at this time).” Exhibit 2.

9. At the hearing Ellyson said that he had no intent to deceive the Board by omitting information about the Colorado application on his North Dakota application form. He said he had no reason to deceive the Board and did not consciously try to deceive the Board. He said that he gave the Oregon Board information about the Colorado denial when he applied in Oregon on October 10, 2000. He said that although he did not tell the North Dakota application interview committee about the Colorado denial he did remind them about the alleged malpractice cases that were the bases for the denial in Colorado and asked whether the Board had any problems with them. Actually, Ellyson had already reported information about those malpractice cases in the application form. Exhibit 1, section 9. Ellyson said that some of those California malpractice cases are still the subject of court action in California. He said that his California license has never been questioned, however.

10. At the hearing Ellyson said at the time he submitted the North Dakota application form he did not believe that his Colorado application would be denied. Ellyson further said that the North Dakota application was confusing to him. He said now he does not know why he did not report the Colorado application on the form at the time he filed the North Dakota application. He said he believes that he must have thought he did not need to report it. Ellyson further said he believes that at the time he was somehow confused about the requirements of sending the verification of licensure form to various states or provinces and the requirements of Section 8 of

the application form regarding reporting information about all medical licenses. Apparently, Ellyson believed that he did not need to report the Colorado application because it was not necessary to send a Verification of Licensure form to Colorado, having not yet been licensed in Colorado, even he thought he would be granted a license. Ellyson said he believes he must have thought he only needed to provide information in the North Dakota application form about where he was or had been licensed. He said he believes he tried to answer the questions on the form as best he could.

11. At the hearing Ellyson said that he is the type of person who does not like to and resents having to fill out forms. He said that he is not good at filling out forms.

12. Prior to the hearing, on June 5, 2001, Ellyson provided a written explanation of certain questions raised by Mr. Sletten regarding his North Dakota application. Exhibit 14. In his letter, Ellyson stated, “[a]s you may know, I have applied to Oregon for a license as well. They state in the application that denial by any other Board is grounds for automatic denial of the applicant by their Board. Thus you can imagine that in my interview before the North Dakota Board, that I would not voluntarily introduce this subject.” *Id.* (Emphasis supplied.)

13. At the hearing Ellyson would not acknowledge that he did not want North Dakota to know about the Colorado application and subsequent denial, either at the time he submitted the North Dakota application form or later, at the time of his North Dakota application interview. Ellyson said the failure to provide information about the Colorado application on the North Dakota application form was just an oversight. He said that he believes that he did bring up the true information of interest, the alleged California malpractice cases, with the application interview committee. He said he did not deem it necessary to mention the Colorado denial to the North Dakota application interview committee. He said that at the time of the interview in North

Dakota he did not know what the Board knew about him, *i.e.*, he did not know that the Board did not know about the Colorado application.

14. Mr. Sletten said that other applicants have not found the reporting requirements of Section 8 of the North Dakota application form confusing. He said that he had never before heard someone say that they were confused by the reporting requirements of the Instruction Sheet for Section 8 and number 11.

15. At the time he made application for a license in North Dakota Ellyson apparently did not ask for clarification about the reporting requirements of the North Dakota application form, even though he said he was confused about the instructions of number 11 and Section 8 on the Instruction Sheet regarding the application form. At least there is no evidence that he asked for clarification.

16. At the hearing Ellyson said he was applying for a medical license in North Dakota and elsewhere because he was looking to locate somewhere other than California to practice medicine. He referred to the “healthcare crisis” in the country, and especially the difficulty in obtaining reimbursement for professional services in California. He said he was looking to relocate through recruiters. He said that a doctor really needs to obtain a license in a state before he applies for a job in that state.

17. Ellyson is a Vietnam veteran. He is a doctor with a fairly distinguished career. His practice in medicine has primarily been located in rural counties and districts, primarily in California and Australia. At the hearing Ellyson appeared to be a truthful, no nonsense person. He appears to be the type of person who has an abiding desire to disassociate himself, as much as possible, with some of the complexities of modern society, and a desire to just be left alone to practice medicine.

## **COMMENTARY ON FINDINGS OF FACT**

It is difficult to make sense out of all of the evidence in this matter. However, the ALJ has no doubt that Ellyson is a very good doctor who, like most people, is, for the most part, truthful. Unfortunately, recently, he has found himself over a period of time to be in a position where although his active licenses may not be affected (*i.e.*, he will not likely lose his license in any state), he is forced to deal with this North Dakota disciplinary action. Ellyson will have to deal with this North Dakota disciplinary action, as he has had to deal with the Colorado action, the rest of his professional career. But it is at this point, it appears, that Ellyson is not being intellectually honest with himself, or the Board. In the North Dakota application process, at first, it appears that Ellyson did not intend to deceive anyone to the extent of granting him a license that might have been improper to grant, or about which there may have at least been more questions if information about the Colorado application had been known. He may well have initially made an inadvertent mistake. However, Ellyson did not correct his mistake at a time when he had an opportunity to correct it, when he must have known, or should have known, that it needed to be corrected. If he had told the North Dakota application interview committee, as he easily could have, that he had been denied a license in Colorado, his earlier inadvertent mistake may have been deemed harmless, or at least understandable. But, he did not tell them. Now the Board through one of its investigative panels is taking administrative action against his license. He is in violation of the law. What remains is what to do about it under N.D.C.C. § 43-17-30.1.

## **CONCLUSIONS OF LAW**

1. Ellyson is currently a physician licensed by the Board to practice medicine in North Dakota under the provisions of N.D.C.C. chs. 43-17 and 43-17.1. Under N.D.C.C. § 43-17-30.1, the Board may take disciplinary action against a licensed physician “by any one or more of the following means, as it may find appropriate...” (seven courses of action listed from imposing fines to revocation of license). Grounds for taking disciplinary action against a licensed physician are stated in N.D.C.C. § 43-17-31. One of the grounds as a basis for taking disciplinary action, is the use by a physician “of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, or immoral practice, in connection with any of the licensing requirements.” N.D.C.C. § 43-17-31(1).

2. Ellyson gave false information to the Board in connection with the requirement of submitting an application for licensure. *See* N.D.C.C. §§ 43-17-17 and 43-17-18. In light of the application instructions of the Instruction Sheet for Section 8, it was false information, or a deceitful practice, for Ellyson not to include information about the Colorado application on the North Dakota application form in Section 8. At a time when he knew about the Colorado denial of his application for license, and when he had opportunity to do so, at the application interview, it was also false information, or a deceitful practice, for Ellyson not to provide the Board with information about the Colorado application and denial.

3. Because of the false information given by Ellyson, or his deceitful practice, the Board was deceived and did issue Ellyson a license to practice medicine in North Dakota without having adequate information to consider the Colorado application and subsequent denial.

4. The evidence does not show that Ellyson intended to deceive the Board, *i.e.*, the evidence does not show that he intended the Board to be deceived by his action of failing to



include the Colorado application on the North Dakota application form. There certainly appears to be no malicious intent to deceive. But, nevertheless, Ellyson did deceive. Ellyson did not include information about the Colorado application. It can be said, then, that this information was intentionally left out of the application. Also, Ellyson did not inform the Board about the Colorado application and subsequent denial after he learned of the denial, when he had a clear chance to do so at the application interview. It can be said, then, that this failure was intentional, and a statement of that intent is clearly manifest in his June 5, 2001 letter. Exhibit 14. By the time of the North Dakota application interview Ellyson was concerned with the statement in the Oregon application that refusal of a license in any other state may be grounds for refusal in Oregon. Exhibit 12. State of mind can be inferred from conduct and circumstantial evidence. *Dean v. North Dakota Workers Compensation Bureau*, 567 N.W. 2d, 626 (ND 1997). Indeed, there is more than circumstantial evidence in this matter. There is Ellyson's own admission. The evidence shows nothing in the way of willfulness in submitting the application but does show willfulness in the application interview process. The former may have been inadvertent; the later appears not to have been.

5. On its face, Section 8 of the North Dakota Application for License to Practice Medicine appears to ask for medical licensure information, *i.e.*, information only about where one has actually been licensed. However, the Instruction Sheet explicitly states that Section 8 must include information about all medical licenses applied for in the U.S. and Canada, whether the license is granted or not. On the other hand, the Verification of Licensure Form, which is referred to in Section 8, relates only to providing information from states or provinces where the applicant has actually been licensed, but not where the applicant has only applied. It is not beyond the realm of possibility, then, that someone like Ellyson, someone who hates forms,

believed or wanted to believe that he needed to provide information in Section 8 only about states or provinces where he was licensed, and not information about states or provinces where he had merely applied but was not licensed. Yet, although Ellyson admits to confusion, he did not inquire about what might be the answer to his confusion. Indeed, Ellyson said he believed that when he applied that he would be granted a license in Colorado. A reasonable person would have inquired if confused.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Ellyson violated the provisions of N.D.C.C. § 43-17-31(1) and therefore is subject to disciplinary action as the Board finds appropriate. Counsel for Investigative Panel B recommends that Ellyson's North Dakota license be suspended for a period of one (1) year, but that none of the suspension be invoked at this time. Counsel further recommends that Ellyson be placed on probation for that one year period of time from the date of the Board's final order in this matter and that Ellyson's North Dakota license be unrestricted after that one year period of probation, provided that he meet all of the following conditions during that one year period of time:

1. Pay all of the costs of this disciplinary proceeding as allowed under N.D.C.C. § 43-17-31.1, and
2. Attend a course in ethics as the Board determines.

If Ellyson fails to meet either or both of the conditions during the one year period of probation, counsel then recommends that the one year period of suspension shall be invoked and Ellyson's North Dakota license shall be suspended for a period of one year from the date the Board determines that Ellyson has failed to meet the conditions of his probation.

The ALJ reluctantly agrees with counsel. It would appear that the action recommended by counsel is appropriate in a situation where the Respondent willfully gave false information or engaged in a deceitful practice, but where there was no real intent to deceive the Board and the violation is not significant relative to other grounds for disciplinary action. Yet, under the circumstances related in this decision, the Board may want to consider less severe disciplinary action.

Dated at Bismarck, North Dakota, this 17th day of January, 2002.

State of North Dakota  
Board of Medical Examiners

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